

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2012-390-C

IN RE:	Application of Blue Jay Wireless, LLC for)	SOUTH CAROLINA OFFICE
	Designation as an Eligible Telecommunications)	OF REGULATORY STAFF'S
	Carrier for the Purpose of Offering Lifeline)	MOTION TO DISMISS
	Service on a Wireless Basis)	

The South Carolina Office of Regulatory Staff ("ORS") hereby moves to dismiss, without prejudice, the Application of Blue Jay Wireless, LLC ("Blue Jay" or the "Company") for designation as an Eligible Telecommunications Carrier ("ETC") pursuant to 26 S.C. Code Ann. Regs. § 103-690 and 103-829 (Supp. 2011), Section 214(e)(2) of the Communications Act of 1934, (as amended), Section 54.201 *et seq.* of the Rules of the Federal Communications Commission ("FCC").

Background

Blue Jay filed its Application for ETC designation to offer Lifeline services to wireless customers on November 14, 2012. Blue Jay is a Texas Limited Liability Company with principal offices in Addison, Texas. The Company is preparing but has not completed a Foreign Limited Liability Company Registration with the South Carolina Secretary of State. Blue Jay does not provide wireless service to customers in South Carolina at present. Blue Jay has applications pending for ETC designation before nine (9) state commissions and before the Federal Communications Commission ("FCC") for ten (10) states where those state commissions do not retain jurisdiction to award ETC designation to wireless carriers. Blue Jay operates as a common carrier, providing wireless mobile phone services to consumers in Texas and stated that

it intends to provide domestic and international voice and data services, primarily to low-income consumers in many states including South Carolina. As a reseller of wireless services, Blue Jay intends to purchase wireless network infrastructure and wireless transmission facilities from Sprint and Verizon Wireless on a wholesale basis through an intermediary such as Natel Networks, LLC.

Section 103-690 of the SC Code of Regulations requires that applications for ETC designation be granted only if the designation will further federal and state universal service goals. FCC rules and the Public Service Commission of South Carolina (“Commission”) regulations impose additional requirements on a carrier requesting ETC designation such that the Company will (1) operate as a common carrier and (2) provide the services designated for Lifeline support. The FCC has determined that “voice telephony services” shall be supported by the federal USF program.¹ Eligible voice telephony services must provide:

- voice grade access to the public switched network;
- local usage;
- access to emergency services; and
- toll limitation for qualifying low-income consumers.

As grounds for this Motion to Dismiss without prejudice, ORS states as follows:

I. The Company has failed to provide responses that support its ETC Application.

ORS sent an Audit Information Request (“AIR”) to the Company, pursuant to S.C. Code Ann. § 58-4-55 (Supp. 2011) on November 20, 2012. ORS received all of the responses from the Company, after granting an extension, on December 8, 2012. After reviewing the Company responses to the AIR, ORS found a significant number of the responses to be incomplete or in

¹ 47 C.F.R. §54.101 (as amended by FCC 12-11).

need of supplemental information. The responses demonstrate that Blue Jay's application is premature. Blue Jay does not appear to have implemented a basic start-up or business plan; the Company is unclear whether will use a third party marketing agency/ third party agents; and Blue Jay could not provide ORS with any contracts or names of its underlying vendors and/or contractors, which is also inconsistent with its stated intent to use Natel Networks, LLC. The response provided was: "[the Company] is evaluating options for support vendors."

ORS respectfully submits that Blue Jay did not provide complete AIR responses to support its Application and as a result ORS questions whether ETC designation is in the public interest. Section 103-690C(a)(1)(C)(b) states, "[p]rior to designating an eligible telecommunications carrier pursuant to 47 U.S.C. § 214(e)(2), the Commission must determine that such designation is in the public interest. In doing so, the commission shall consider, *inter alia*, the benefits of increased consumer choice, and the unique advantages and disadvantages of the applicant's service offering."

The lack of such basic information is an indication to ORS that Blue Jay is attempting to obtain ETC designation from multiple jurisdictions too quickly and without being fully prepared to comply with Commission orders, rules and regulations.

After several opportunities to supplement AIR responses and repeated contacts by ORS, Blue Jay has refused to respond leaving ORS with the impression that the Company is moving too fast in several jurisdictions and as a result the Company is non-responsive. Without the information requested, ORS submits that neither it, nor the Commission can determine whether the Application is in the public interest.

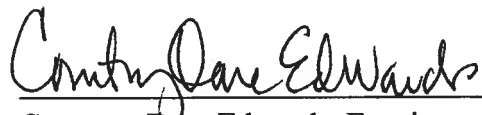
Finally, judicial economy would be best served by dismissing the Application and allowing the Company to resubmit once it has finalized its plans for providing Lifeline services to low income consumers in South Carolina.

II. The Company seeks a waiver of certain Commission Rules and Regulations but fails to specify which Regulations.

The Company stated in its Application that it meets the statutory and regulatory requirements for designation as an ETC and is able to offer Lifeline-supported services throughout its designated service area in South Carolina. Blue Jay then stated “[t]o the extent that certain provisions of S.C. Code Regs. § 103-690 differ slightly from more recently adopted Rules of the FCC and the FCC’s *Lifeline Reform Order*, Blue Jay requests that the Commission waive those provisions pursuant to the authority granted by S.C. Code Regs. § 103-803.” However, the Company fails to specify the Regulations from which it seeks to be exempt.

WHEREFORE, for all the reasons set forth above, ORS submits that granting the Company’s Application is not in the public interest at this time and respectfully requests the Commission to dismiss this Application without prejudice.

Respectfully submitted,



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February 4, 2013
Columbia, South Carolina

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2012-390-C

IN RE: **Application of Blue Jay Wireless, LLC for)**
 Designation as an Eligible) **CERTIFICATE OF**
 Telecommunications Carrier for the) **SERVICE**
 Purpose of Offering Lifeline Service on a)
 Wireless Basis)

This is to certify that I, Pamela J. McMullan, have this date served one (1) copy of the **MOTION TO DISMISS** in the above-referenced matter to the person(s) named below by causing said copy to be deposited in the United States Postal Service, first class postage prepaid and affixed thereto, and addressed as shown below:

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC, 29202



Pamela J. McMullan

February 4, 2013
Columbia, South Carolina